

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL HELLER and MARK HELLER, as Co-
Personal Representatives of THE ESTATE OF
CAROL HELLER,

UNPUBLISHED
January 27, 2005

Plaintiffs-Appellants,

v

J. SCOTT ALLEN, M.D.,

No. 250321
Oakland Circuit Court
LC No. 2000-023155-NH

Defendant-Appellee,

and

ST JOSEPH MERCY HOSPITAL – OAKLAND,
THE FOX CENTER, BLUE CROSS AND BLUE
SHIELD OF MICHIGAN, THE WELLNESS
PLAN, and GREEN SPRING HEALTH
SERVICES OF MICHIGAN, INC,

Defendants.

Before: Hoekstra, P.J., and Cavanagh and Borello, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting defendant's motion for summary disposition in the medical malpractice action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id.* We review de novo a trial court's decision on a motion for summary disposition de novo as a matter of law. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

To support a claim of medical malpractice, a plaintiff must establish (1) the applicable standard of care, (2) breach of that standard, (3) injury, and (4) proximate causation between the alleged breach and the injury. *Weymers v Khera*, 454 Mich 639, 655; 563 NW2d 647 (1997). Under Michigan law, proximate cause is subject to a more probable than not standard, thus a plaintiff is required to show that had the defendant not been negligent, there was a greater than fifty percent chance of survival. *Dykes v William Beaumont Hosp*, 246 Mich App 471, 477; 633 NW2d 440 (2001). To establish cause in fact, a plaintiff must introduce evidence that affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. *Weymers, supra*, 648.

Plaintiffs presented the testimony of three expert witnesses. Although tracheobronchitis was listed as the official cause of death, the experts agreed that it was not the likely cause of a sudden death. The experts all noted that the evidence was contradictory, and none of them could state with a reasonable degree of medical certainty what caused the death.

Where no expert could testify with any certainty as to a cause of Heller's death, it was impossible for plaintiffs to present substantial evidence to support a reasonable conclusion that but for defendant's actions, decedent would have survived. Without regard to whether she should have been hospitalized to treat her substance abuse problems, there is no evidence beyond speculation to show that her release caused her death. Decedent did not die of an overdose and she did not commit suicide. Her death may have been completely due to unrelated causes, and not attributable to any negligence. In the absence of proof, plaintiffs' case is purely speculative.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello